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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91237315
Party	Plaintiff American Marriage Ministries
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Date	04/22/2019
Attachments	Opposer Opposition to Applicant Motion to ReOpen Discovery.pdf(50839 bytes) EXH Exhibit A.pdf(120307 bytes) EXH Exhibit B.pdf(126534 bytes) EXH Exhibit C.pdf(155111 bytes) EXH Exhibit D.pdf(160311 bytes) Declaration of KAM.pdf(13417 bytes) Scan Apr 22 2019 at 323 PM.PDF(1356832 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN MARRIAGE MINISTRIES,)	
)	
Opposer,)	Opposition No. 91237315
)	
v.)	
)	OPPOSER’S OPPOSITION TO
)	APPLICANT’S MOTION TO
UNIVERSAL LIFE CHURCH)	RE-OPEN DISCOVERY
MONASTERY STOREHOUSE, INC.)	
)	
Applicant.)	
_____)	

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Opposer American Marriage Ministries (“AMM”) opposes Applicant Universal Life Church Monastery Storehouse, Inc.’s (“ULC”) efforts to reopen discovery in this matter, a delay tactic that is unwarranted in light of the issues raised in AMM’s Motion for Summary Judgment and in this Opposition more generally. After more than a year spent on discovery for this matter, and only after AMM filed for summary judgment, ULC now seeks to reopen discovery. ULC’s only goal in requesting more discovery is to obtain additional discovery related to AMM’s internal correspondence since this Opposition was initiated. Such documents do not have any bearing on the sole issue in this case: is the mark “GET ORDAINED” generic or descriptive? AMM accordingly requests that the Board instruct ULC to respond to AMM’s Motion for Summary Judgment without any further delay.

II. FACTUAL AND PROCEDURAL BACKGROUND

AMM initiated this Opposition to ULC’s registration of the mark “GET ORDAINED” in October 2017. Discovery formally closed over a year later, on November 16, 2017. Due to the parties’ scheduling conflicts near the end of the discovery period, at the request of ULC and

AMM the Board granted a limited extension of the discovery period in order for each party to take certain depositions.¹ Those depositions concluded, and the limited discovery period extension ended, on January 25, 2019.

In the depositions of AMM witnesses Glen Yoshioka and Dylan Wall on January 24 and January 25, Mr. Yoshioka and Mr. Wall testified that AMM currently uses intra-office communications platforms Slack and Pivotal Tracker, in addition to email, to conduct some internal communications. Yoshioka Dep. 28:3-29:4; Wall Dep. 89:18-90:18. Mr. Wall testified that, based on his recollection, AMM did not begin using Slack or Pivotal Tracker until the spring of 2018—months after this case was initiated, and after AMM’s initial document collection and production in the case. Wall Dep. 94:8-95:2. AMM in fact started using Slack in November 2017 and Pivotal Tracker in May 2018. AMM Dec. ¶¶ 3, 5.

In response to ULC’s counsel’s observation that Slack and Pivotal Tracker documents were not produced in discovery, AMM agreed to conduct a search of the Slack and Pivotal Tracker platforms in search of any documents that might be responsive to already-issued interrogatories or requests for production—even though the documents were not created until after the start of litigation. The parties agreed that AMM would produce any responsive documents in two weeks time, by February 8, 2019. Wall Dep. 188:23-189:7.

Seattle, where the parties and their counsel are located, was subsequently struck by several unprecedented snow storms that lasted multiple days and caused significant disruption to local transportation and business. Mennemeier Dec. ¶ 2. On Friday, February 8, in the heart of these storms, AMM’s counsel advised ULC’s counsel by email that AMM’s supplemental production might be slightly delayed. Mennemeier Dec. ¶ 3. ULC’s counsel acknowledged

¹ At that time, ULC both requested an extension to conduct depositions for itself and opposed AMM’s request for the same.

receipt of this message. Mennemeier Dec. ¶ 3. AMM subsequently made a supplemental production of all even remotely responsive Slack and Pivotal Tracker messages on Monday, February 11, 2019.

The following week, ULC's counsel contacted AMM's counsel to express questions and concerns about the production. The parties scheduled a discovery conference for March 6, but due to ULC's counsel falling ill, rescheduled the conference for March 12. Mennemeier Dec. ¶ 4.

At the telephonic conference, AMM asked that ULC specifically identify what additional information it believed it needed in order to understand the Slack and Pivotal Tracker documents that were produced, and which requests for production ULC believed AMM had not complied with in making the supplemental production. The only request for production ULC identified that it believed AMM had not complied with was Request for Production No. 25, which sought "documents created, revised, or modified prior to 2010." Mennemeier Dec. ¶ 5. As AMM explained in its response to ULC's email identifying this Request, since AMM did not start using Slack or Pivotal Tracker until more than half a decade after 2010, Slack or Pivotal Tracker documents were not responsive to Request for Production No. 25. Mennemeier Dec. ¶ 6.

AMM additionally offered to attempt to obtain and produce additional Slack messages to provide context for the messages that had already been produced if ULC did not use such courtesy to further delay proceedings in this case. Mennemeier Dec. ¶ 6. ULC did not respond to this offer at any point prior to filing its Motion to Reopen Discovery.² Mennemeier Dec. ¶ 7.

While the parties worked to informally address this discovery dispute, AMM prepared a Motion for Summary Judgment, which it filed on February 28, 2019, the deadline for dispositive

² Given AMM's offer, AMM is perplexed by ULC's counsel's statement, made under penalty of perjury, that AMM "was unwilling to produce any additional documents or consent to further discovery." See Matesky Dec. ¶ 19.

motions in this case. AMM's motion presents evidence of third-party understandings of the phrase "get ordained," including dictionary definitions, testimony from ULC's President, and documents produced in discovery showing uses of the phrase "get ordained" by parties besides AMM and ULC. ULC waited until April 1, 2019, the deadline for filing an opposition to AMM's Motion for Summary Judgment, to file its Motion to Reopen Discovery in lieu of filing a responsive brief.³

III. LEGAL STANDARD

A request for discovery to respond to summary judgment must be adequately supported by a showing of need. *Keebler Co. v. Murray Bakery Prods.*, 866 F.2d 1386, 1390 (Fed. Cir. 1989). Pursuant to Fed. R. Civ. P. 56(d), such a request also must be supported by an affidavit showing the reasons the requesting party cannot present facts essential to its opposition to the motion for summary judgment without additional discovery. *See* TBMP 528.06. The affidavit must specifically state the reasons why the party cannot present facts sufficient to defeat summary judgment without the opportunity to conduct additional discovery, and the request for additional discovery must set forth the specific areas of inquiry needed in order to respond to the summary judgment motion. *See Keebler Co.*, 866 F.2d at 1389-90 (unfocused requests for discovery are insufficient); *see also Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1799 (Fed. Cir. 1987) (mere assertion that discovery is necessary is insufficient); *Strang Corp. v. The Stouffer Corp.*, 16 USPQ2d 1309, 1311 n.6 (TTAB 1990) (affidavit stating that, during discovery, party will seek to elicit information on likelihood of confusion insufficient); *J.I. Case Co. v. F.L. Industries, Inc.*, 229 USPQ 697, 701 (TTAB 1986)

³ During this time, ULC also filed a tort case against AMM in the United States District Court for the Western District of Washington based on information that ULC used the depositions of AMM witnesses in this trademark matter to obtain.

(statement by applicant of need to take discovery on validity of assignment was unsupported speculation).

ULC's motion to reopen discovery is governed by FRCP 6(b)(1)(B). *See* Trademark Rule 2.116; TBMP 509.01(b). Discovery may be reopened only if the movant can show that its failure to act during the time previously allotted was the result of excusable neglect. The excusable neglect inquiry takes into account relevant circumstances surrounding the party's omission or delay, including (1) the danger of prejudice to the nonmovant, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, and (4) whether the movant acted in good faith. *Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380, 395 (1993); *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582, 1586 (TTAB 1997) (declining to reopen discovery).

IV. ARGUMENT

ULC's motion fails to establish the requisite requirements both for requesting additional discovery in response to a motion for summary judgment and for reopening discovery. ULC does not need the information it bases its motion on for this proceeding, as the discovery it seeks regarding AMM's internal communications has no bearing on the sole issue in this proceeding. Moreover, ULC's declaration in support of its motion fails to set forth specific, relevant areas of inquiry in which ULC believes further discovery is needed in order to respond to AMM's Motion for Summary Judgment, or specific reasons why it was previously unable to obtain such evidence. ULC additionally fails to show that its neglect in obtaining the discovery it now seeks was excusable. Its request to reopen discovery would prejudice AMM (whereas the absence of additional discovery would not prejudice ULC); ULC does not provide sufficient reasons for its delay in seeking to reopen discovery; reopening discovery would unnecessarily lengthen and complicate the judicial proceedings; and ULC has not acted in good faith in seeking to reopen

discovery. The Board should reject ULC's baseless accusations of discovery violations on the part of AMM and instruct ULC to respond to AMM's Motion based on the record that was already developed through more than a year's worth of discovery.

A. ULC Does Not Show Any Need For The Discovery It Now Seeks

ULC's Motion and supporting affidavit both fail to identify specific areas of inquiry in which ULC requires additional discovery in order to respond to AMM's Motion for Summary Judgment. ULC's vague request for document requests, interrogatories, and depositions on subject matter that either (a) has already been the subject of exhaustive discovery in this proceeding or (b) does not pertain to the registrability of the mark in question does not satisfy the requirements of Fed. R. Civ. Pro. 56(d). *See Keebler Co.*, 866 F.2d at 1390 (requests for discovery in response to a motion for summary judgment must be focused and supported by a showing of need).

The only issue in this Opposition proceeding is whether the phrase "get ordained" is generic or descriptive, or whether it is distinctive of ULC's ordination services. The principal test for deciding whether a term is generic or descriptive is the perception of the relevant public. *See Bos. Duck Tours, LP v. Super Duck Tours, LLC*, 531 F.3d 1, 18, 17 n.17 (1st Cir. 2008); *Anheuser-Busch Inc. v. Stroh Brewery Co.*, 750 F.2d 631, 638 (8th Cir. 1984). In keeping with this, ULC admits that a central issue in this case is the "public use of 'get ordained.'" ULC Motion to Reopen at 8. ULC could and should have conducted discovery on this issue during the formal discovery period. It should not be permitted to conduct additional discovery on this issue, or any other, now, months after the close of discovery.

AMM's Motion for Summary Judgment directly addresses the sole issue in the case by presenting evidence about the perceptions of the relevant public as to the meaning of the phrase "get ordained." AMM's Motion exclusively cites evidence of others' understanding of the phrase

“get ordained.” Specifically, AMM cites uses of the phrase by online ordination services providers besides AMM and ULC; uses of the phrase by members of the public who are not ordination services providers; dictionary definitions of the words in the phrase; and ULC’s President’s testimony about his understanding of the meaning of the phrase.⁴

AMM’s evidence shows that “get ordained” has had a generic or, at most, descriptive meaning to the public for many years, both before and since ULC’s efforts to trademark the phrase. ULC had ample opportunity to propound discovery about or challenge these examples of how members of the relevant public use and/or understand the phrase “get ordained,” just as it had ample opportunity to identify and present examples, if any, of third-party uses of the phrase that suggest the phrase is distinctive. To the extent it seeks additional discovery about the “public use of ‘get ordained,’” as indicated by its Motion, ULC cannot show a need for special dispensation to conduct additional discovery on this issue, as ULC had the entirety of the formal discovery period to conduct discovery on this precise issue.

ULC’s affidavit in support of its Motion to Reopen Discovery identifies several additional categories of discovery that ULC claims it needs in order to respond to AMM’s Motion for Summary Judgment—namely, discovery related to the nature, context, and meaning of Slack and Pivotal Tracker messages produced in a supplemental production by AMM. Matesky Dec. ¶¶ 25-27. But this request, focused on AMM’s internal communications subsequent to the initiation of this Opposition proceeding, seeks discovery that has no rational connection to AMM’s Motion for Summary Judgment. *See Lopez v. Delta Int’l Mach. Corp.*,

⁴ Contrary to ULC’s claim, *see* footnote 2 of ULC’s Motion to Reopen, much of AMM’s evidence on its face pre-dates initiation of this Opposition proceeding. For instance, one web article cited in AMM’s Motion is dated August 22, 2009 (AMM 369-70); an online advice column shows a post dated August 18, 2015 (AMM 373); dictionary definitions come from a dictionary published in 1991; and another document shows a page from a book published in 2015 (AMM 376).

312 F. Supp. 3d 1115, 1137 (D.N.M. 2018) (noting that courts properly deny Rule 56(d) motions where the information sought does not relate to a relevant legal question). ULC supplies no reason it needs further discovery about the supplemental production besides its speculative hope that such additional discovery might supply some basis for opposing AMM's Motion for Summary Judgment. A litigant's "speculative hope" is not an adequate reason for additional discovery. *Sweats Fashions, Inc.*, 833 F.2d at 1566-67; *Pure Gold, Inc.*, 739 F.2d at 627; *see also* Fed. R. Civ. Pro. 56(d) (to obtain additional discovery in order to oppose summary judgment, party requesting additional discovery must present an affidavit specifying the precise reasons why it is unprepared to present facts essential to justify its opposition).

AMM's Motion for Summary Judgment does not mention, much less rely on, AMM's own use of the phrase "get ordained," either internally or in communications with the public.⁵ AMM's Motion does not address AMM's own use of the phrase at all, because what matters to a determination of whether a phrase is generic or whether it is distinctive is how the relevant public understands and uses the phrase. *Bos. Duck Tours, LP v. Super Duck Tours, LLC*, 531 F.3d at 18 (citing as relevant evidence of public perception of a phrase (1) consumer surveys; (2) the use of the term in media publications, (3) use of the term by competitors in the industry, (4) purchaser testimony concerning the term; and (5) the mark holder's use of the term); *Retail Servs. v. Freebies Publ'g*, 364 F.3d 535, 544 (4th Cir. 2004). ULC has not presented any reason why it is not prepared to respond to AMM's evidence of third-party uses and understandings of the phrase "get ordained."

⁵ AMM is, accordingly, bewildered by ULC's repeated claim that AMM's Motion relies on factual claims regarding use of the phrase *by AMM*, and ULC's statement that AMM's use of the phrase may have been "engineered in order to boost its legal theory." *See* ULC's Motion to Reopen at 5, 6.

B. ULC's Motion Fails To Satisfy Its Burden To Reopen Discovery

ULC bears the burden to show that discovery should be reopened. The factors to consider on a motion to reopen discovery all weigh against ULC's request, however. *See Pioneer Investment Services Co.*, 507 U.S. at 395; *Pumpkin Ltd.*, 43 USPQ2d at 1586. Reopening discovery would prejudice AMM; ULC's request for further discovery is made purely to further lengthen these proceedings; ULC offers no compelling reason for its delay in moving to reopen discovery; and ULC makes bad faith accusations against AMM in its efforts to reopen discovery.

1. Reopening discovery would prejudice AMM

Permitting ULC to engage in additional discovery would prejudice AMM in at least two respects. First, it would require AMM to expend additional time, effort, and cost to reengage in discovery. AMM already fully participated in the discovery process for this matter during the formal discovery period and the extended discovery period, even making an additional production of documents following the close of discovery.⁶ It took ULC's discovery requests seriously, ultimately producing more than three times as many documents as ULC in this case. ULC has yet to identify any discovery requests that it believes AMM failed to satisfy. Accordingly, AMM should not be required to endure the additional expenses and efforts of renewed discovery.

⁶ AMM additionally granted ULC some lenience when ULC's discovery requests wandered far astray of the question at issue in this case (whether "get ordained" is generic). *See, e.g.*, ULC's Requests for Admission No. 1, 2, 3 (generally addressing issues that do not pertain to the registrability of "get ordained," such as questions about AMM employees' access to general ULC documents); ULC's Requests for Production No. 25, 26, 27 (same, plus questions about ULC, ULC's president, and ULC's president's prior business ventures); ULC's Interrogatories No. 6, 7; *see generally* Wall Dep.; Yoshioka Dep. But this proceeding is not the proper one for additional discovery on matters unrelated to the registrability of the "GET ORDAINED" mark—including the discovery ULC now seeks about AMM's internal communications regarding its business and its website.

Second, reopening discovery would prejudice AMM by delaying consideration of AMM's timely Motion for Summary Judgment. Delayed consideration of that motion will delay resolution of this case, lengthening the period during which AMM is in limbo on the question of whether the phrase "get ordained" is registrable.

While AMM would be prejudiced by reopening discovery, ULC would not be prejudiced by a decision not to reopen discovery. ULC has already enjoyed a complete, and even extended, period during which to conduct discovery on the sole issue in the case. Supplemental discovery would not materially affect ULC's ability to litigate this issue.

2. ULC's motion is brought only to delay these proceedings

ULC is using its demand for additional discovery as a tactic to delay resolution of these proceedings and to reopen discovery for ULC alone on an unconstrained range of irrelevant issues. Throughout this case, AMM complied with its discovery obligations. As a courtesy to ULC, AMM produced a supplemental set of discovery after the discovery cut-off, even though the documents in the supplemental production were, in many instances, created after the discovery cut-off and otherwise covered by AMM's timely discovery objections. ULC should not be permitted to use AMM's courtesy to prejudice AMM and delay these proceedings.

In February 2018, AMM gathered and produced those documents in its control that were responsive to ULC's First Set of Interrogatories and First Set of Requests for Production, subject to certain objections. At the time of collection, AMM did not and could not search Pivotal Tracker for responsive documents, as it did not start using Pivotal Tracker until three months later. AMM Dec. ¶ 5. AMM's vice president, Dylan Wall, does not recall whether AMM searched Slack, which it had only very recently started using, *see* Wall Dep. 94:8-95:2, but as AMM's supplemental production demonstrates, a search of Slack would have yielded no responsive results, as the only Slack communications that were even arguably responsive to

ULC's discovery requests did not take place until many months later. When ULC expressed interest in AMM's Slack and Pivotal Tracker communications during depositions, AMM cooperatively agreed to conduct a new search of those platforms for potentially responsive documents.

The documents AMM found in its search of Slack and Pivotal Tracker do not supply any new information unknown to the parties during the rest of discovery. And they do not supply any non-duplicative material relevant to a determination of how the public understands the phrase "get ordained." Consequently, these documents were covered by AMM's objections that ULC's discovery requests were vague and overbroad. AMM nonetheless produced these documents as a courtesy to ULC to assuage concerns that potentially relevant information could exist on these new communications platforms.

AMM has sought to work with ULC to address its concerns about alleged deficiencies in its supplemental production. ULC's responses to these efforts reveal (1) that ULC cannot identify any specific discovery request that it believes AMM violated and (2) that ULC is more interested in a discovery fight than actually obtaining information that is pertinent to this case. When ULC expressed dissatisfaction with AMM's supplemental production, AMM requested that ULC specify which discovery requests it believed AMM had failed to respond to in its supplemental production so that AMM could confirm that it had sufficiently searched Slack and Pivotal Tracker. The only request for production that ULC identified as not having been met was a request that sought documents created "prior to 2010." *Mennemeier* Dec. ¶ 6. Yet the supplemental production could not possibly have contained documents responsive to that request, as the Slack and Pivotal Tracker platforms were not used by AMM prior to 2017, so AMM had no obligation to search the platforms for documents responsive to that request.

ULC appears to seek to reopen discovery either as a dilatory tactic or as a mechanism by which to expand discovery to cover topics it wishes it had—but did not—cover during the official discovery period (e.g., evidence “since 2010” about the topics identified in ULC Request for Production No. 25 which, significantly, do not bear on the public’s perception of “get ordained”). Neither is an appropriate basis for reopening discovery.

3. ULC Offers No Compelling Reason for its Delay in Moving to Reopen Discovery

ULC’s Motion vaguely asserts that ULC “seeks evidence directly related to the alleged public use of ‘get ordained,’” but the need for this category of evidence has existed since the case was initiated; this is the exact basis on which AMM based its opposition from the beginning. Unlike the *Opryland USA, Inc. v. Great American Music Show, Inc.* case ULC cites, this is not a case in which discovery was stayed midway through the discovery period due to the filing of a motion for summary judgment. *See* 970 F.2d 847 (Fed. Cir. 1992). Instead, the parties had the benefit of a complete—and even extended—discovery period. ULC deposed two AMM witnesses and could have asked at any time about AMM’s witnesses’ knowledge of the public use of “get ordained” and AMM’s examples of public uses of “get ordained” that were produced in discovery. Any failure on ULC’s part to obtain such evidence is due solely to ULC’s own inexcusable neglect.

The affidavit in support of ULC’s motion identifies a narrower subset of discovery being sought related to the nature, context, and meaning of AMM’s produced Slack and Pivotal Tracker messages. But again, ULC fails to explain adequately why it waited until the day its response to AMM’s Motion for Summary Judgment was due before moving to reopen discovery on these topics. ULC offers no explanation for its unaccountable failure to respond to AMM’s offer to seek and produce additional contextual messages for the Slack messages it produced.

Nor does ULC explain its inability to identify any discovery requests for which it believes AMM owes it additional discovery.

C. ULC's Motion Is Based On Bad Faith Accusations of Discovery Violations

ULC's various accusations are a sleight of hand designed to smear AMM. ULC repeatedly accuses AMM of discovery violations, despite its inability to identify any discovery requests it reasonably believes AMM violated. It suggests that AMM owed the impossible duty of producing certain documents in discovery even before such documents existed, and that AMM wrongfully "withheld" such documents during productions that occurred months before the documents were created. It further complains that AMM was "unwilling" to cooperate on any further discovery, despite AMM's courtesy in making a supplemental production of documents following the close of discovery and its offer to attempt to obtain and produce additional documents to provide context for that supplemental production—an offer to which ULC never responded. To the extent that ULC bases its motion to reopen discovery on AMM's alleged withholding of responsive documents, its failure to plausibly allege that AMM actually withheld discovery related to any of its timely discovery requests is fatal.

ULC also verges on accusing AMM of spearheading a conspiracy to defraud ULC and the Board about the true meaning of "get ordained." In its motion and supporting affidavit, ULC repeatedly speculates that AMM "coordinated with third parties regarding language used to refer to ordination services." ULC's Motion to Reopen at 7; *see also* ULC's Motion to Reopen at 6; Matesky Dec. ¶¶ 22, 23, 24. But AMM's purely internal communications via Slack and Pivotal Tracker by their very nature cannot show bilateral "coordination with third parties."⁷ Instead,

⁷ As AMM has already explained to ULC, AMM uses Slack for internal instant messaging purposes, including for employees to share with each other links to relevant third-party websites, drafts of online advertisement language, and links to AMM's platform for testing new web features for its website. AMM Dec. ¶ 2. AMM's web developers use Pivotal Tracker as a project

they demonstrate AMM’s one-side effort to boost its own profile as an ordination services provider by citing to web articles about online ordination services and reviews of AMM’s ordination services and products. *See, e.g.*, AMM 784. Given the complete absence of evidence that these platforms were used for third-party communications, ULC’s and its counsel’s repeated representations to the Board that the Slack messages show “coordination with third-parties” are at best misleading. *See* ULC’s Motion to Reopen at 6, 7; Matesky Dec. ¶¶ 22, 23, 24.

Moreover, ULC’s theory of “conscious manipulation and influence” is belied by the dates of the documents it cites—the vast majority of which were created after the close of discovery. In AMM’s Motion for Summary Judgment, AMM presented evidence created, gathered, and produced well before the close of discovery. *See* AMM’s Motion at 5-8. Its examples of third-party uses of “get ordained” by individuals who are not ordination providers comes directly from discovery produced in February 2018. *See* AMM’s Motion at 7 (citing AMM 00369-70). Yet ULC speculates that internal AMM correspondence not even written until November and December 2018 and January 2019 could be examples of external coordination with third parties about content written and published many months prior. This stretches credulity.

ULC also ignores AMM’s evidence that parties inherently immune to AMM’s “influence”—such as competitors of AMM and ULC’s own President—understand and use the phrase “get ordained” in a generic way. *See* AMM’s Motion at 5-6 (citing the Deposition of George Freeman and AMM 00770-78); *see also* ULC’s Response to AMM’s Interrogatory No.

planning tool as they work on developing or problem-solving webpages or features for AMM’s website. AMM Dec. ¶ 4.

Mr. Yoshioka and Mr. Wall both testified that AMM uses Slack and Pivotal Tracker for internal communications, and AMM has reiterated in its subsequent communications with ULC that these platforms are used for internal purposes. Had ULC sought a declaration about this point, or had ULC bothered to ask during deposition, AMM would gladly have confirmed that the platforms are for purely internal use. *See* AMM Dec. ¶ 6.

20 (admitting that ULC “is generally aware that third parties may use the term ‘get ordained’ when discussing the act of becoming a minister or wedding officiant”).

“Summary judgment need not be denied merely to satisfy a litigant’s speculative hope of finding some evidence that might tend to support a complaint.” *Pure Gold, Inc.*, 739 F.2d at 627. ULC is grasping for evidence to discredit AMM’s evidence that the phrase “get ordained” is generic or descriptive, but not distinctive. Reopening discovery to permit ULC to engage in this fishing expedition “not only would put the parties to unnecessary expense but also, equally importantly, would be wasteful of judicial resources.” *Id.* (noting that voluminous records may be appropriate to an infringement suit “but are wholly unnecessary to resolution of the issue of registrability of a mark”).

V. CONCLUSION

ULC cannot meet its burden to show that it needs additional discovery about AMM’s Slack and Pivotal Tracker messages in order to adequately respond to AMM’s Motion for Summary Judgment. The messages are not cited in AMM’s Motion. And the messages do not relate to the sole issue in AMM’s Motion: whether the phrase “get ordained” is generic or descriptive. The produced messages do not bear on the abundant evidence already in the record about the public’s perception of the meaning of the phrase “get ordained,” nor do they show the improper third-party “coordination” ULC imagines. Both parties have had ample opportunity to conduct discovery on the public’s perception of the phrase “get ordained,” and the issue is ripe for consideration by the Board at this time. AMM therefore asks that the Board deny ULC’s Motion to Reopen Discovery and instruct ULC to respond to AMM’s Motion for Summary Judgment without further delay.

Dated: April 22, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2019, I served the foregoing Opposer's Opposition to Applicant's Motion to Reopen Discovery on the Applicant by emailing to Applicant as follows:

Michael P. Matesky, II
Matesky Law PLLC
trademarks@mateskylaw.com
mike@mateskylaw.com

/Nancy V. Stephens/
Nancy V. Stephens

EXHIBIT A

Ryan Duffey

From: Nancy Stephens
Sent: Friday, February 08, 2019 10:44 AM
To: Kelly Mennemeier
Subject: FW: Supplemental Discovery

From: Mike Matesky [<mailto:mike@mateskylaw.com>]
Sent: Friday, February 08, 2019 10:39 AM
To: Nancy Stephens
Subject: RE: Supplemental Discovery

Thanks for the update, Nancy. Stay warm!

Mike

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From: Nancy Stephens [<mailto:nancy.stephens@foster.com>]
Sent: Friday, February 08, 2019 10:21 AM
To: 'Mike Matesky' <mike@mateskylaw.com>
Subject: Supplemental Discovery

Mike: How are things in the white frost! We promised the Supplemental Disc. Response today but we might be a day late. I will try for today but wanted to send you this notice in advance. Thank you. Nancy

Nancy V. Stephens

ATTORNEY

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EXHIBIT B

Ryan Duffey

From: Mike Matesky <mike@mateskylaw.com>
Sent: Sunday, March 10, 2019 3:59 PM
To: Ben Hodges; Nancy Stephens
Cc: Kelly Mennemeier
Subject: RE: AMM v ULC

Counsel,

I'm finally (mostly) out of the flu-haze, and my voice even works again for the most part. Is there a time tomorrow afternoon we could have a meet-and-confer regarding the discovery issue?

Thanks,
Mike

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Sent: Wednesday, March 06, 2019 10:35 AM
To: 'Mike Matesky' <mike@mateskylaw.com>; Nancy Stephens <nancy.stephens@foster.com>
Cc: Kelly Mennemeier <kelly.mennemeier@foster.com>
Subject: RE: AMM v ULC

Mike,

We hope you feel better. Please let us know when you want to reschedule and we'll do our best to find a time that works.

Thanks.

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Ben Hodges

ATTORNEY

Foster Pepper PLLC

Tel: 206.447.6282

ben.hodges@foster.com

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Sent: Wednesday, March 06, 2019 8:11 AM

To: Nancy Stephens

Cc: Mike Matesky; Ben Hodges; Kelly Mennemeier

Subject: Re: AMM v ULC

Nancy, I am ill today and won't be able to make the call. I'll get in touch later to reschedule.

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Yes Mike, we can meet tomorrow. What time is good for you. Nancy

Nancy V. Stephens

ATTORNEY

Foster Pepper PLLC

Tel: 206.447.8925

Fax: 206-749-2006

Cell: 206-412-4121

nancy.stephens@foster.com

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To: Nancy Stephens

Cc: Ben Hodges; Kelly Mennemeier

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EXHIBIT C

Ryan Duffey

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Sent: Tuesday, March 12, 2019 2:54 PM
To: Ben Hodges; Nancy Stephens
Cc: Kelly Mennemeier
Subject: RE: AMM v ULC

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The documents relate to both AMM's use of "get ordained" as well as third-party use of "get ordained" (and AMM's coordination of such use third-party use). Such information is critical to rebutting the claims made in AMM's motion for summary judgment.

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Subject: RE: AMM v ULC

Great, do you want to call me then? 206.701.0331

Mike Matesky

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EXHIBIT D

Ryan Duffey

From: Kelly Mennemeier
Sent: Wednesday, March 13, 2019 9:50 AM
To: 'Mike Matesky'
Cc: Ben Hodges; Nancy Stephens
Subject: RE: AMM v ULC

Hi Mike,

We appreciate your written clarification of the information you seek, but based on your email, we do not see how further discovery is warranted.

Regarding your concern about our responsiveness to Applicant's RFP No. 25, we can confirm that none of the Slack or Pivotal Tracker documents are responsive to that request. RFP No. 25 seeks "documents created, revised, or modified prior to 2010." As Mr. Wall testified at his deposition, AMM did not begin using Slack or Pivotal Tracker until 2018, so none of the content on either of those platforms would be responsive.

As for the supplemental Slack messages you seek, we disagree with your positions that you cannot sufficiently understand the Slack messages or that they are otherwise not properly produced. They were produced as they are kept in the ordinary course for the business and that is the only requirement on our production. However, that said, if you agree not to use our additional courtesy as grounds to delay or re-open discovery, we will confirm with our client whether it's possible to obtain the immediately preceding and following messages, and, if so, will work to produce those. However, based on the efforts to gather these messages in the first place, we're not confident that additional messages are available.

Finally, we cannot agree to additional deposition time. You knew going into the depositions that AMM's use of "get ordained" and third party uses of "get ordained" were at issue; indeed, I think we can all agree that this issue forms the crux of this case. You had ample opportunity to ask the corporation, and Mr. Wall and Mr. Yoshioka personally, about both topics during their depositions. You also had an opportunity to ask—and did ask—about AMM's uses of Slack and Pivotal Tracker, including who at AMM used each platform and how long they'd been using those platforms. There is no reason you were unable to ask whether conversations about the phrase "get ordained" took place on those platforms. And frankly, it's unclear whether or why you think that anyone at AMM would be able to provide different information about AMM's use or third-party use of "get ordained" based on the responsive documentation from those platforms. At most, the Slack and Pivotal Tracker documents provide supplemental, but redundant, examples of generic or descriptive uses of the phrase.

Best,
Kelly

Kelly Mennemeier
ATTORNEY
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Subject: AMM v ULC

Mike:

I don't know if you want anything more formal than this but here is the additional information to explain the redacted information in the certain documents submitted as our Supplemental Response to Discovery Requests.

AMM000781 – The redaction from the top line is a reference to a private URL. The second line next to the AMM logo is a reference to the same URL without “https”.

AMM000783 - The redaction from the top line is a reference to a private URL. The second line next to the AMM logo is a reference to the same URL without “https”.

AMM0000790 – All conversations in the Slack messages were internal conversations between a small group of AMM employees (4). There is no further context for this particular “message” and no more available information.

AMM0000792 - The redacted area is the URL for a secure location.

Thank you. Nancy

Nancy V. Stephens
ATTORNEY

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Seattle, WA 98101

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Cell: 206-412-4121
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN MARRIAGE MINISTRIES,)	
)	
Opposer,)	Opposition No. 91237315
)	
v.)	
)	
UNIVERSAL LIFE CHURCH)	DECLARATION OF KELLY A.
MONASTERY STOREHOUSE, INC.)	MENNEMEIER IN SUPPORT OF
)	OPPOSITION TO MOTION TO
)	REOPEN DISCOVERY
Applicant.)	
_____)	

I, Kelly A. Mennemeier, hereby declare and affirm as follows:

1. I am an attorney at Foster Pepper PLLC and one of the attorneys representing the Opposer, American Marriage Ministries (“AMM”) in this matter against Universal Life Church Monastery Storehouse, Inc. (“ULC”). I have personal knowledge of the facts stated herein and am otherwise competent to make this declaration.

2. In early to mid February 2019, Seattle experienced several snow storms involving record levels of snowfall, which caused significant disruption to local transportation and business. This included several inches of snowfall on February 8, 2019. *See, e.g.*, <http://www.seattleweatherblog.com/snow/february-2019-seattles-snowiest-month-50-years/>; <https://komonews.com/weather/scotts-weather-blog/what-a-snowy-month-for-the-seattle-record-books-a-look-back-on-the-snowstorms-of-february>.

3. Attached as Exhibit A is a true and correct copy of an email from Nancy Stephens to Mike Matesky sent on February 8, 2019, and Mike Matesky’s response to that email.

4. Attached as Exhibit B is a true and correct copy of an email between counsel for AMM and counsel for ULC regarding the scheduling of a discovery conference.

5. Attached as Exhibit C is a true and correct copy of an email I received from Mike Matesky on March 12, 2019.

6. Attached as Exhibit D is my email sent to Mike Matesky on March 13, 2019 in response to his email of March 12, 2019.

7. I never received a response from Mike Matesky to my email of March 13, 2019, or to my offer in that email to attempt to gather additional documents.

I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED ON April 22, 2019 at Seattle, Washington.

s/ Kelly A. Mennemeier
Kelly A. Mennemeier

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2019, I served the foregoing Declaration of Kelly A. Mennemeier in support of Opposer's Opposition to Applicant's Motion to Reopen Discovery on the Applicant by emailing to Applicant as follows:

Michael P. Matesky, II
Matesky Law PLLC
trademarks@mateskylaw.com
mike@mateskylaw.com

/Nancy V. Stephens/
Nancy V. Stephens

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN MARRIAGE MINISTRIES,)
)
Opposer,)
)
v.)
)
UNIVERSAL LIFE CHURCH)
MONASTERY STOREHOUSE, INC.)
)
Applicant.)
_____)

Opposition No. 91237315

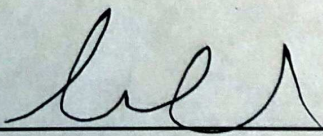
**DECLARATION OF GLEN
YOSHIOKA IN SUPPORT OF
OPPOSITION TO MOTION TO
REOPEN DISCOVERY**

I, Glen Yoshioka hereby declare and affirm as follows:

1. I am the President of American Marriage Ministries ("AMM"). I have personal knowledge of the facts stated herein and am otherwise competent to make this declaration.
2. AMM uses Slack for internal instant messaging purposes, including for employees to share with each other links to relevant third-party websites, drafts of online advertisement language, and links to AMM's platform for testing new web features for its website.
3. AMM first began using Slack in November 2017.
4. AMM's web developers use Pivotal Tracker as a project planning tool as they work on developing or problem-solving webpages or features for AMM's website.
5. AMM first began using Pivotal Tracker in May 2018.
6. AMM uses Slack and Pivotal Tracker solely for internal AMM communications.

I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED ON April 22, 2019 at Seattle, Washington.

s/ 
Glen Yoshioka